Ministry of
Municipal Affairs
and Housing

Ontario

THE PLANNING ACT

GUIDELINE 8

Zoning and Other Land Use Controls

October 1983

1 INTRODUCTION

The purpose of this guideline is to explain the provisions in the Planning Act 1983 relating to zoning and a number of other land use controls. The legislation provides a clearer distinction between the various purposes for which zoning is used. It introduces a variety of long and short-term mechanisms so municipalities can select the controls that are most appropriate for specific local circumstances.

The long-term zoning provisions enable local municipalities to zone existing uses that are stable and to pre-zone lands to future uses where the uses can be pre-determined. These provisions include standard zoning as contained in section 34 of the Planning Act, as well as holding and bonusing provisions. Use of bonus and holding provisions will depend on municipalities having official plan policies setting down the basis for their use. This guideline will also assist municipalities in preparing these official plan policies.

The short-term provisions include interim control by-laws and temporary use zoning by-laws, both of which imply a time-related control.

In including this variety of planning tools, the legislation recognizes practices that have been used in the past by municipalities to control development in unique situations. Interim controls, holding provisions, bonusing provisions and cash-in-lieu of parking provisions have all been used in various forms by some municipalities even though the legislation did not specifically provide for them and traditional zoning powers were not considered to be adequate to achieve certain desired objectives.

Site plan control by-laws will be dealt with in a subsequent guideline.

2 ZONING BY-LAWS – SECTION 34

Purpose – The zoning by-law defines the uses permitted in specific locations within a municipality and the specific development standards relating to those uses. These standards must be precise and not open to varied interpretations. All the provisions must conform or be in agreement with the more general policies in the municipal, regional and/or county official plans, as appropriate.

Process – Before passing a by-law, municipal councils must inform the public of their intention and hold a public meeting so that any person can make his views known on the by-law (subsections 34 (12 and 13)). Notice[1] of the meeting must be given at least 30 days in advance unless the municipality has set out in its official plan the circumstances in which reduced public notice requirements would be more appropriate.[2]

At the conclusion of this public notice process, subsection 34(16) allows council to make a **minor** change to the proposed by-law without giving further notice. However, subsection 34(16) should be read in conjunction with section 60 which requires that council provide persons a fair opportunity to present their views before a by-law is passed. Therefore, the use of the section should be limited to non-substantive changes to a proposed by-law, for example, minor technical or "housekeeping" matters, and correction of errors.

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1. See Regulation 404/83 – August, 1983, and Guideline 5 "Working with the New Regulations".
2. See Guideline 6, "Official Plan Policies on Public Notice" for assistance in preparing these official plan policies.

Once a by-law has been passed, the municipal clerk **must** give notice of its passing,[3] within 15 days. The first day of this period is the day **after** the decision is made. The appeal period for zoning by-laws is 35 days starting **on** the day the municipality passes the by-law. If no appeal is received within this time, the by-law is considered to have come into force on the day it was passed.

The exception to this rule (Subsection 34(19)), is where a by-law is passed to implement an adopted official plan amendment. The by-law may not conform to the local approved official plan at that time, but would conform when the official plan amendment is approved. If the official plan amendment is approved, then the by-law is considered to have conformed on the day it was passed (Subsection 24(2)). The by-law will also be considered to have come into force on the day it was passed. If the official plan amendment is not approved, then the by-law could not come into effect. Therefore, the by-law should be repealed. Similarly, if an official plan amendment is modified at the time of its approval so that the by-law does not conform, or there is some question as to its conformity, council has two options:

- It could repeal the by-law and pass another that clearly conforms to the official plan amendment as modified and approved.

- It could pass an amending by-law bringing the by-law into conformity to the official plan amendment.

In choosing these options, council may want to consider adopting appropriate alternative public notice policies that would allow reduced notice provisions in situations where such a "housekeeping" by-law amendment is being processed. Council can, however, avoid the situation of having the implementing by-law's coming into effect dependent on the approval of the official plan amendment. Council can choose to give notice and hold a meeting simultaneously for an official plan amendment and the implementing by-law, but delay the passing of the by-law until after the official plan amendment is dealt with. The by-law could then be finalized taking into account the amendment as approved and/or modified. Depending on the extent of the changes required, Council can determine whether further notice would be required prior to passing the by-law.

If the official plan amendment is referred to the Ontario Municipal Board, in whole or part, council can wait until the Board makes its decision and the by-law can be passed in a form reflecting the Board's decision.

Notice of appeal on a by-law must be filed with the municipal clerk. The appeal must outline the objection to the by-law and reasons for the objection. Any by-law that has been appealed must be dealt with by the Ontario Municipal Board.

Upon receipt of an appeal the clerk must send to the Ontario Municipal Board:

- notice of the appeal;

- a copy of the by-law certified by the municipal clerk;

- a sworn declaration or affidavit certifying that the notice requirements of the by-law's passing were complied with;

- the original or true copies of all written submissions and material relating to the submissions received before the by-law was passed;

- additional material requested by the Board.

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3. See Regulation 404/83 "Notice Requirements - Zoning By-laws", August, 1983.

Generally the decision of the Board is final. The only time a decision of the OMB is **not** final is where the Minister of Municipal Affairs and Housing advises the Board, at least thirty days before the OMB hearing, that a matter of provincial interest may be adversely affected by the by-law before the Board. If the Minister has advised the OMB in writing that this is the case, the Board cannot issue an order on the part or parts of the by-law identified by the Minister as being of provincial interest. Instead, the Cabinet is required to deal with the decision of the Board by confirming, varying or rescinding it or by making changes to the by-law directly.

If no appeal is filed, the clerk will prepare an affidavit or declaration stating this fact, and the by-law will come into effect – subject to the provisions discussed earlier pertaining to subsections 34(19) and 24(2).

3 HOLDING PROVISIONS – SECTION 35

Purpose – The holding provisions enable a municipality to identify, in a zoning by-law, the uses that are ultimately intended for specific lands, but to delay their actual development until some later time when identified conditions are met. By using the holding symbol "H" or "h", in conjunction with a land use category, in the by-law, the municipality can clearly state its commitment to having the lands developed for the use(s) permitted in that land use category at an appropriate time in the future.

These provisions are intended to be applied in those situations where the municipality **knows** precisely what uses will be developed in the zoned area. In a situation where the ultimate use is unclear or unknown, council may wish to apply traditional zoning methods such as the use of a non-development zone. When the ultimate use of the land is determined, the by-law would be amended through the full amendment process to permit the use.

Process – The imposition of the holding provision must follow the procedures set out for zoning by-laws under section 34. However, to remove the holding symbol the municipality is only required to give notice of its intent to pass the by-law to remove the symbol.[4] This is because the land use for the site would have already been established at the time the area was zoned with the holding provision.

If council refuses an application to remove the holding symbol or does not make a decision within 30 days of the clerk's receipt of the application, then the applicant can appeal to the Ontario Municipal Board. The Board must then hold a hearing and make a decision to either dismiss the appeal, amend the by-law to remove the symbol or direct the municipality to amend the by-law in accordance with the Board order.

Preparation of Official Plan Policies – A municipality cannot use these holding provisions unless official plan policies relating to their use have been approved. In preparing such policies the municipality must first decide why and in what circumstances it wants to use this special authority. The policies themselves should be general enough to apply whenever the holding provision is to be used. Site specific official plan amendments should not be necessary each time a holding by-law is passed. Holding policies should deal with three main issues:

- Objectives of the municipality in using holding provisions

4. See Regulation 403/83, "Notice Requirements – Removal of Holding Symbol from Zoning By- aw", August, 1983.

The official plan policies should outline the municipality's objectives or reasons for using holding provisions. Situations in which holding provisions might be appropriate could include:

- the phasing of development or redevelopment;
- pending the provision of water, sewer or other services;
- the implementation of policies for locations or developments requiring special design features.

Other circumstances in which this type of zoning might be used would depend on the needs of the municipality.

- Policies regarding use and removal of holding provisions

To indicate how a municipality intends to meet its objectives respecting the use of holding provisions, the official plan should contain policies relating to:

- *locational criteria* – how will sites or areas to be subject to the holding provisions be selected? The policies addressing this question can be of a general or specific nature depending on the objective or reason for using the holding provisions. In some cases the holding provision may apply to areas of land in different parts of a municipality; in other cases, to a single area. The application would depend on local circumstances. Some suggestions for identifying locations could include:
  - * land use designation in a certain location;
  - * unserviced lands in specified areas;
  - * lands adjacent to a particular use or activity;
  - * lands accessing a certain roadway or fronting on a waterway;
  - * undeveloped lands in all or part of a municipality;
  - * lands at a particular intersection.

  In some cases the municipality may wish to identify the affected areas on the official plan schedule.

- *removal of holding provision* – It is important for a potential developer or applicant to understand when and under what conditions the holding provision will be removed from the lands in which he has an interest. The timing of the removal would be dependent on meeting the conditions identified by the municipality. The official plan should therefore address:
  - * the conditions that must be met before development is permitted to proceed;
  - * the timing, if known, of the anticipated removal of the holding provision;
  - * the responsibility or role of the developer/applicant and municipality or other agency in meeting conditions or in demonstrating that the conditions for removing the holding provision have been met.

- Implementation through the by-law

The holding provisions are implemented through the municipal zoning by-law. The municipality must zone a property for its intended use and add the holding symbol to the zone category to indicate that the development of the site cannot proceed until the symbol is removed. To avoid any confusion and problems of conformity the municipality must specify in the official plan what uses or kinds of uses will be permitted **in the interim period** until the holding symbol is removed.

The official plan's policies relating to the use of holding provisions should indicate that the actual holding by-law will:

- identify lands subject to holding provisions by adding the holding symbol to the zone category.

- specify the land uses to be permitted in the interim, as well as any regulations applying to these lands, during the period of the holding provision being in place. This can be done by incorporating the holding zone in the text of the by-law, as well as identifying it on the zoning map. For example, a Residential-H zone would be shown on the map and the text would contain a Residential-H zone category. The category would list the uses or standards to be permitted in the interim.

  Interim uses would likely be limited to existing uses unless the municipality felt confident that some other similar use would be compatible with the ultimate use of land. When the H is removed, these Residential-H zone provisions would no longer apply. The Residential zone provisions would then apply.

As a general rule, the level of detail in these holding policies will depend on the intended application. The principle to be adhered to is to inform the public of the circumstances in which the holding provisions would be used. Since removal of the "H" is not subject to the same appeal process as a regular zoning by-law amendment, people must know whether they will be affected and what their rights and responsibilities are if they are affected.

What about the status of existing holding by-laws? Because there are a variety of existing holding by-laws and official plan policies, there is no standard answer to this question. Municipal solicitors should be consulted to advise councils on what action should be taken in specific local circumstances.

Generally, however, the status of the existing policies will be dependent on their nature and intent. Do the existing policies do what is envisaged by section 35; that is, the ultimate use is identified but its development is being delayed for some reason. If this is the case, the municipality should adopt appropriate official plan policies to reflect the new provisions and bring its by-law into conformity with the official plan. Future applications of a hold in this situation will have to comply with the legislation. Therefore, updating existing policies is preferable to maintain consistency.

If the municipality chooses to retain its existing system where the holding symbol is different than what is called for in section 35, it **should not** use the provisions of subsection 35(4) to remove the holding symbol. Rather, the holding symbol should be removed by the full rezoning process in accordance with subsections 34(11) to (26). The reason is the lack of third party appeal possibility under the Planning Act with respect to removal of the hold. Someone may not have objected to the original holding by-law on the understanding that he could appeal the amending by-law to remove the holding symbol.

The municipality's existing by-law may also contain general holding provisions for lands where the future use is not known. If this is the case, traditional methods of zoning may be quite appropriate.

4 INCREASED HEIGHT AND DENSITY (BONUS) PROVISIONS - SECTION 36

Purpose - The increased density or bonus provisions in the legislation enable a municipality to award increases in density and height of development in return for meeting specific municipal planning objectives. The provisions are intended to provide incentives to encourage private sector involvement in the achievement of stated public objectives, such as the provision of special or assisted housing, the preservation of buildings with historical or architectural value or the provision of additional open space or other service.

The bonus provisions provide a legislative framework for negotiating site specific development arrangements with a developer by giving him the option of either developing to the standard zoning provisions or receiving the height or density bonus in return for providing identified facilities. If the developer chooses to take advantage of the bonus option an agreement would likely be needed between the developer and the municipality.

Process - The bonus provisions must be incorporated in a by-law passed under section 34 of the Planning Act. Therefore, all the notice, approval and appeal provisions of that section apply. Prior to the passing of a by-law containing such provisions, appropriate policies must be incorporated in the official plan. Where the bonus policies are set out in the official plan and by-law, and all the requirements are met by a developer, the density and/or height bonus must be granted without requiring a rezoning to permit the additional density and/or height. An agreement would be entered into addressing the facilities, services or matters, if the municipality so required.

Preparation of Official Plan Policies - The official plan policies must be carefully considered in order to ensure that the municipality's intentions with respect to allowing height and density increases in development in a neighbourhood, are not misunderstood by its residents. It should be clear that such bonus awards will be made in defined circumstances. In determining these circumstances the municipality should also keep in mind that use of the bonus provisions will be most effective and the increase will be more acceptable to the public, if the neighbourhood absorbing the increase will also enjoy the benefit of the facility or service to be provided.

The official plan should address the following points relating to the use of the bonus provisions:

- Objectives of the municipality in using bonus provisions

  At a minimum, the official plan should identify the general circumstances in which the bonus provisions might apply. Specifically, the objectives the municipality wants to achieve in using the bonus provisions should be identified. For example, the municipality's official plan may contain various objectives relating to a range of municipal interests, such as:

  - provision of a wide range of housing types including family type housing or assisted housing;
  - preservation of the unique character of certain parts of the municipality containing buildings with historical or architectural significance;
  - encouraging innovative building designs;
  - provision of community and open space facilities such as small parks, day care centres, community centres, recreational facilities.

If the municipality wishes to use bonus techniques to achieve such objectives, statements to this effect should be included in the official plan.

- Implementation

Since bonus provisions are actually implemented through the zoning by-law, it is important that the by-law contain enough information so that a prospective developer knows what his development options are. Therefore, the official plan's implementation policies should require **that the by-law**:

- contain the detailed development standards that would apply when the bonus is awarded. If the bonus is not awarded, the standards of the basic zoning category assigned to the site would apply. These standards, of course, must comply with the policies in the official plan.

- set out how these bonus standards relate to the conditions ("facilities, services or matters") that are required to be met in order for the bonus standards to apply to the site.

- address the matters to be dealt with in the agreement. The reference in the by-law should not make the bonus award conditional on entering into the agreement. Rather, it should be clear that as part of the bonus being awarded and the bonus standards applying, the agreement will be entered into.

- be written in such a way as to ensure that discretion cannot be applied. If the conditions to be met and the bonus to be awarded are all agreed to and set out in an agreement, a rezoning should not be necessary.

In determining appropriate sets of bonus standards, several points should be kept in mind:

- the extent of the increase in height/density should be compatible with adjacent development.

- the bonus density and height proposed must conform with the municipality's official plan.

- the municipality's expectations of the developer in terms of services to be provided or conditions to be met should be realistic, in terms of marketability, general economics and the needs of the municipality.

- specific or unique local needs and expectations should be taken into account.

As the success of bonus provisions is dependent upon a developer being given enough incentive to consider using them it is important to ensure that the bonuses are worthwhile. At the same time, it is essential to ensure that whatever additional height or density is awarded will not overload streets or other public services upon which the official plan is predicated.

5 INTERIM CONTROL BY-LAWS – SECTION 37

Purpose – The interim control by-law is intended to allow the municipality to control development in areas where it wishes to review the existing land use and development policies, or where new policies will be developed. The interim control by-law is designed

to prevent or at least limit new development pending completion of a planning study. The by-law should identify the purposes for which the land can be used in the interim. These interim provisions must conform to the official plan in effect.

An interim control by-law should not be confused with a holding by-law. The latter specifies the uses that will eventually be allowed on certain lands once stated conditions are met. The interim control by-law, on the other hand, is a land use control that constrains development rights on certain lands for **a set time period**, until studies to determine the eventual future land uses are completed. Once these studies are done, the municipality's zoning by-law would have to be formally amended to reflect the desired use. In other words, interim control allows a municipality time to review land use policies and not have possible future objectives compromised by development occurring that may not be consistent with those future objectives. The interim control by-law is **not** intended to be used to achieve random freezes on land for indefinite periods of time.

Process – A municipality can pass an interim control by-law to control development for a time period of **up to one year** (from the passing of the by-law). That by-law can, however, be amended to allow the period to extend to up to 2 years from the time of the passing of the interim control by-law. If the municipality does not complete the study and pass a zoning by-law under section 34 within the time period set out in the interim control by-law, or the amendment, then the provisions of the zoning by-law that applied prior to the interim control by-law's coming into force, again come into effect. In this situation, where the interim control by-law lapses, council cannot pass another interim control by-law for the same lands for at least 3 years.

The interim control by-law cannot, however, prohibit any use that existed legally prior to the passing of the by-law nor any building for which a building permit had been issued (and not revoked) prior to the passing of the by-law.

Although the municipality is not required to give prior notice regarding the passing of an interim control by-law, notice must be given within 30 days of the by-law's passing in accordance with Regulation 405/83 entitled "Notice Requirements: Interim Control By-laws". The same requirement applies to a by-law extending the period the by-law is in effect. The appeal period is 60 days from the passing of the by-law and any appeals must be filed with the municipal clerk. If an appeal is filed, the same provisions applying to a by-law passed and appealed under section 34 also apply. These include the municipal clerk sending a record of the appeal to the OMB, the provisions relating to the Board hearing and decision, and the procedures relating to provincial interest being identified and decided upon.

An interim control by-law comes into effect when it is passed, even if it is appealed. The Board's decision (or Cabinet's if applicable) would apply to the by-law in effect.

6 TEMPORARY USE BY-LAWS – SECTION 38

Purpose – Temporary use by-laws are intended to allow land and buildings to be zoned for temporary uses for renewable periods of up to 3 years. Temporary use by-laws are **not** intended to be used as a holding mechanism nor as an interim control measure. In other words, it is not meant to be used in a way that will prevent the use of land for some purpose. Rather, the temporary use by-laws provide a positive way to zone lands where it is known that a specific use is appropriate in the short term.

These by-laws can permit uses for a limited time span, e.g., a parking lot to be permitted for 2 years on a future office site; or, on an event basis, e.g. a fair on a shopping centre parking lot for the month of July for a three year period. In either case, the by-law must conform to the official plan in effect.

The legislation authorizes the passing of these by-laws to permit temporary uses that would otherwise be prohibited by the by-law. If it is the municipality's intention to permit such uses and these uses do not conform with the municipality's official plan, a statement authorizing the passing of temporary use by-laws in this type of situation can be incorporated in the official plan. Otherwise, the municipality would be required to amend its official plan each time a temporary use by-law is being considered if the proposed use does not conform to the official plan.

Process – A temporary use by-law is subject to the same notice, approval and appeal procedures as a zoning by-law under section 34. The by-law will likely be of a site specific nature; therefore, it will have to define the specific area to which it applies, the uses permitted for that area and the authorized time period (i.e. not exceeding **three years**). Also, council can pass another by-law to extend the temporary use for additional periods of not more than three years **each**. Temporary use by-laws can be extended indefinitely, providing that each extension is done by an appropriately approved by-law. Upon the expiry of the time period(s) authorized by the by-law, the uses or buildings that were permitted under the by-law **cannot** be continued as legally non-conforming as provided for under section 34(9)(a). Rather, the temporary uses must cease. Therefore, municipalities should be careful not to allow as temporary uses those that could become "permanent" and difficult to terminate.

7 CASH-IN-LIEU OF PARKING – SECTION 39

Purpose – The legislation introduces provisions relating to cash-in-lieu of parking similar to provisions that presently exist in some municipalities under special legislation. Section 39 allows the municipality the option of entering into an agreement with the owner or occupant of a building site exempting that person from the parking requirements set out in the by-law, and requiring that cash-in-lieu payments be made to the municipality. This option would likely be used in a situation where the municipality is prepared to reduce or eliminate the parking requirement on a particular site and to provide the required number of parking spaces in a municipal parking facility on another site with the funds obtained in lieu of the parking.

The application of the cash-in-lieu of parking provision is based on an agreement entered into by the owner or occupant and the municipality.

This section is not intended to replace or conflict with the minor variance process. A committee of adjustment would make the decision that the parking requirements on a particular site could be varied slightly through the minor variance process. On the other hand, section 39 authorizes council to enter into an agreement exempting an owner to the extent determined in the agreement from either providing or maintaining the parking facilities in return for a specified cash payment. The purpose and effect of the two processes are quite distinct.

Process – The agreement entered into would have to elaborate on how the money would be paid to the municipality in return for the granting of the exemption. In addition, the agreement must include the basis for determining how the payment would be calculated. The details of this agreement would have to be negotiated between the municipality and the developer. This agreement may be registered against the land to which it applies. Once

registered, the money that comes due for payment to the municipality can be deemed to be taxes due on the land and can be collected as such. Once the payments have been made, the municipal clerk, when requested by the landowner, must certify that the money has been paid and the agreement has been terminated. This certification must be in a form registerable in the appropriate land registry office.

Council, in determining whether to use this alternative, should consider a number of issues:

- the effect of the reduced level or lack of parking facilities on a particular site on the surrounding neighbourhood;

- in situations where the impact may be significant, the option of giving public notice of council's consideration of the cash-in-lieu of parking agreement;

- the demonstration of equitability and fairness with respect to the calculation of the cash-in-lieu payments.

The money received by the municipality under the agreement must be paid into a special account and it must be applied for the same purposes as the reserve fund set up under paragraph 55[5] of section 208 of the **Municipal Act**. The monies in the account can be invested in such securities as a trustee may invest under the **Trustee Act**.[6] The earnings derived from the investment of this money would become part of the special account. The municipal auditor would report on the activities and the position of the account in his annual report.

CONCLUSION

The purpose of this guideline is to provide assistance to anyone who may be using the sections in the new Planning Act dealing with zoning and other land use control mechanisms. It is a guide only and not a mandatory statement of how all zoning and land use control issues are to be dealt with. A municipality's zoning by-law and official plan policies relating to these matters should be prepared in accordance with local needs.

Any questions not addressed in the guideline should be directed to your solicitor or to the various branches of the Ministry of Municipal Affairs and Housing.

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5. Sub-paragraph (f) under paragraph 55, in respect of municipal parking lots and parking facilities, sets out that the reserve fund can be used for (i) payment of interest and principle in respect of debentures issued; (ii) the acquisition, establishment or improvement of additional parking facilities; and (iii) for any other purpose that council approves.

6. The applicable sections are sections 26 and 27 of the Trustee Act.

For further information contact any of the following offices of the Ministry of Municipal Affairs and Housing:

Community Planning Advisory Branch

Central Region
47 Sheppard Avenue East
2nd floor
Willowdale, Ontario
M2N 2Z8
Telephone: (416) 224-7635
ZENITH 52650

South East Region
244 Rideau Street
3rd floor
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South West Region
495 Richmond Street
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North East Region
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North West Region
435 James Street South
Thunder Bay, Ontario
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Plans Administration Branch – North and East

777 Bay Street
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Toronto, Ontario
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Plans Administration Branch – Central and Southwest

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Local Planning Policy Branch

777 Bay Street
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